

**Danta, Victoria R.**

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**From:** Ballard, Marcella  
**Sent:** Tuesday, January 08, 2019 1:07 PM  
**To:** Levitt, Jamie A.  
**Cc:** Hunt, Adam J.; Garganta, Angel A.  
**Subject:** RE: Danone US, LLC v. Chobani, LLC - 1:18-cv-11702-CM - Notice of Subpoena to Appear and Testify at a Hearing in a Civil Action

Jamie: On this basis Dannon has agreed to withdraw the subpoena. Regards, Marci

Marcella Ballard, Esq.  
VENABLE LLP  
212.370.6289 (t)  
917.776.7656 (c)  
Mballard@venable.com

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**From:** Levitt, Jamie A. <[JLevitt@mofo.com](mailto:JLevitt@mofo.com)>  
**Date:** Tuesday, Jan 08, 2019, 10:00 AM  
**To:** Ballard, Marcella <[MBallard@Venable.com](mailto:MBallard@Venable.com)>  
**Cc:** Hunt, Adam J. <[AdamHunt@mofo.com](mailto:AdamHunt@mofo.com)>, Garganta, Angel A. <[AGarganta@Venable.com](mailto:AGarganta@Venable.com)>  
**Subject:** RE: Danone US, LLC v. Chobani, LLC - 1:18-cv-11702-CM - Notice of Subpoena to Appear and Testify at a Hearing in a Civil Action

Thanks Marci. We confirm that Mr. Sandfort will adopt Mr. McGuinness's TRO testimony in his own sworn PI direct testimony affidavit and is competent to testify to every fact therein.

Please confirm you will withdraw the subpoena this morning.

Thanks,

Jamie

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**From:** Ballard, Marcella [mailto:[MBallard@Venable.com](mailto:MBallard@Venable.com)]  
**Sent:** Tuesday, January 08, 2019 8:48 AM  
**To:** Levitt, Jamie A.  
**Cc:** Hunt, Adam J.; Garganta, Angel A.  
**Subject:** RE: Danone US, LLC v. Chobani, LLC - 1:18-cv-11702-CM - Notice of Subpoena to Appear and Testify at a Hearing in a Civil Action

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Jamie: Thank you for calling from your office last night to try to resolve the subpoena. I hope your medical procedure went okay yesterday. We passed along your email to our client and Dannon requires that Chobani confirm in writing that Mr Sandfort will adopt the McGuinness testimony as his own under penalty of perjury and is competent to testify to every fact therein. If that written confirmation is received Dannon is willing to withdraw the subpoena. Regards, Marci

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**From:** Levitt, Jamie A. <[JLevitt@mofo.com](mailto:JLevitt@mofo.com)>  
**Date:** Monday, Jan 07, 2019, 6:48 PM  
**To:** Ballard, Marcella <[MBallard@Venable.com](mailto:MBallard@Venable.com)>  
**Cc:** Hunt, Adam J. <[AdamHunt@mofo.com](mailto:AdamHunt@mofo.com)>  
**Subject:** RE: Danone US, LLC v. Chobani, LLC - 1:18-cv-11702-CM - Notice of Subpoena to Appear and Testify at a Hearing in a Civil Action

Marci,

I am writing to follow up on the telephone conversation we just had pursuant to Judge McMahon's Order that we "work out" the issue of Mr. McGuinness's subpoena. As I did on that call, I reiterate our request that Dannon withdraw the subpoena. In addition to the fact (of which you are now aware) that Mr. McGuinness is not available on January 14, I represent that the fact witness on whom Chobani will rely (Niel Sandfort) has personal knowledge of and can confirm the topics in Mr. McGuinness's TRO declaration as well as cover *additional* information germane to the PI. Mr. Sandfort is a long-time Chobani employee (over 8 years tenure with the company), currently Vice President for Product Management & Innovation, with direct and personal knowledge about the Gimmies<sup>TM</sup> products, including his leadership role in the development of the platform, the decision to reduce the amount of sugar in the products at issue, and his responsibility for overseeing the resulting changes to the food and labeling.

Federal Rule of Civil Procedure 45 requires that a party not impose an undue burden and the Judge cautioned us not to waste time with duplicative witnesses -- given these circumstances we submit that pursuing the subpoenaed testimony will fail those tests. Accordingly, please let us know promptly (given our tight schedule) if you will agree to withdraw the subpoena to avoid our renewing our request for the Court's intervention.

Thank you,

Jamie

**JAMIE LEVITT**

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**From:** Levitt, Jamie A.  
**Sent:** Sunday, January 06, 2019 3:43 PM  
**To:** 'Danta, Victoria R.'  
**Cc:** Ballard, Marcella; Garganta, Angel A.; DePalma, Nicholas M.; Sinatra, Maria R.; Vetesi, Claudia M.; Hunt, Adam J.  
**Subject:** RE: Danone US, LLC v. Chobani, LLC - 1:18-cv-11702-CM - Notice of Subpoena to Appear and Testify at a Hearing in a Civil Action

Victoria,

We request that you withdraw your subpoena for Peter McGuinness pursuant to Rule 45 and the Court's Jan. 2, 2019 Order. Mr. McGuinness was not designated by Chobani as a witness for the preliminary injunction hearing, his testimony is duplicative of Mr. Sandfort's (who will address the issues in Mr. McGuinness's TRO declaration and more) and Mr. McGuinness is unavailable on Jan. 14.

Thank you,

Jamie

**JAMIE LEVITT**

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**From:** Danta, Victoria R. [mailto:VRDanta@Venable.com]

**Sent:** Friday, January 04, 2019 4:56 PM

**To:** Levitt, Jamie A.; Hunt, Adam J.

**Cc:** Ballard, Marcella; Garganta, Angel A.; DePalma, Nicholas M.; Sinatra, Maria R.; Danta, Victoria R.; Danta, Victoria R.

**Subject:** Danone US, LLC v. Chobani, LLC - 1:18-cv-11702-CM - Notice of Subpoena to Appear and Testify at a Hearing in a Civil Action

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Counsel:

Please see the attached Subpoena to Appear and Testify at a Hearing in a Civil Action directed to Peter McGuiness, Chobani, LLC's Chief Marketing and Commercial Officer, which will be sent out for service today. Please confirm if you will accept service of this subpoena. Otherwise, please provide Mr. McGuinness's home address to facilitate service on him as soon as possible.

Thank you,

**Viki R. Danta, Esq. | Venable LLP**

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